IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.816 OF 2007

Maharashtra State Co-operative)
Bank Limited, Sir Vithaldas)
Thakersay Memorial Building,)
9, Maharashtra Chamber of Commerce,)
Fort, Mumbai 400 023.) ....Petitioners.

V/s

1. Namdev Tukaram Pednekar)
B/104, Dak Sanghatana CHS,)
Goregaon - Mulund Link Road,)
Near Dindoshi Bus Depot,)
Malad (East), Mumbai 400 097)
)
2. N.L. Shinde, Presiding Officer)
4th Labour Court, Mumbai,)
New Administrative Building,)
Opp. Chetana College, Bandra (East))
Mumbai - 400 051.) .....Respondents.

Mr. A. D. Shetty for the Petitioners.

Mr. Rahul Nerlekar for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 26th June, 2007

ORAL JUDGMENT:

1. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of Respondent No.1.

FACTS:

2. The Petitioner - Bank is a Society registered under the Maharashtra State Co-operative Societies Act, 1960 and is an Apex Bank in the Co-operative Banking Sector in the State of Maharashtra. Respondent No.1 was an employee of the said Bank and was appointed as Grade-II Officer on probation on 23/03/1992. During the period from July, 1991 to April, 1992 the Bank had recruited about 618 candidates in various categories.

3. The Commissioner for Co-operation and the Registrar of Co-operative Societies, Pune informed the Bank by his letter dated 24/11/1992 that the Bank had not followed the recruitment procedure and further informed the Petitioner - Bank not to confirm these persons in the services of the Bank. It is an admitted position that Respondent No.1 was one such employee who had been recruited during the relevant period.

4. The Bank was directed by the Commissioner for Co-operation to terminate the services of 94 clerks and 255 trainees by letter dated 31/12/1992 purportedly exercising the power vested in him under section 79A of the Co-operative Societies Act. The Bank supported

these recruits who had been appointed during the relevant period and informed the Commissioner for Co-operation that though certain allegations which were made regarding recruitment procedure which was followed by the Bank may be true, yet, it was contended that by virtue of standing orders which were applicable to these recruits who were appointed as probationers, they were supposed to have been confirmed within a period of 3 to 6 months of their service in the Bank.

5. Thereafter, the Deputy Secretary to the Government of Maharashtra informed the Bank that the Government of Maharashtra had put an embargo on the recruitment and had stated that as long as backlog of backward candidates was not cleared, no further recruitment of the staff should be made.

6. In the meantime, Co-operative Bank Employees' Union, Greater Mumbai, filed complaint being Complaint (ULP) No. 38 of 1993 before the Industrial Court which was pleased to pass an ad-interim order directing the Bank to maintain status quo in respect of the trainees and, therefore, the order of termination was not issued against these trainees. Thereafter, on 14/03/1997, Complaint (ULP)

No. 38 of 1993 was dismissed by the Industrial Court. The Union challenged the said order by filing a Writ Petition vide Writ Petition No.2384 of 1997. An ad-interim order was passed in favour of trainees and the Bank was restrained by an order of injunction from retrenching or otherwise removing any of the employees except in cases of dismissal for misconduct.

7. Respondent No.1 voluntarily resigned from the services of the Bank on 13/09/1997. Subsequently, however, on 03/02/1999, Commissioner for Co-operation gave permission to recruit and absorb the employees. These directions were given by the Commissioner for Co-operation in view of the settlement between the Co-operative Bank Employees' Union which was a recognized Union of the Banks and the Maharashtra State Co-operative Bank Ltd. which was executed between the parties on 09/12/1998. In the said settlement, a brief history relating to the appointment of these employees was mentioned by way of recital and it was recorded that the Board of Directors had resolved to confirm the probationers and trainees with effect from 11/07/1998. It was, however, agreed between the parties that though a request was made by the Union to the Management to confirm them retrospectively, this request was declined since the

Commissioner had given confirmation prospectively in his letter dated 08/07/1998. However, terms of settlement clearly stated that the settlement was applicable to the employees viz probationers/trainees whose names appear in Annexure-A and Annexure-B to the settlement and, further, it was stated that though these probationers/trainees were not eligible for confirmation benefits with retrospective effect, as a gesture of good will, the parties had agreed that two increments would be given to the probationers whose names appear in Annexure-A and one increment shall be granted to the trainees whose names appear in Annexure-B. It is an admitted position that when the said settlement was signed by the registered Union and the Bank, Respondent No.1 herein had already resigned in 1997. In view of the settlement, Writ Petition which was filed in this Court was withdrawn after consent terms were filed.

8. Another relevant factor which needs to be mentioned here is that the Bank and the registered Union also had entered into settlement dated 21/04/1994 and, thereafter, one more settlement was arrieved at on 31/12/1997. It is essential to refer to these settlements since Respondent No.1 herein claims benefit of these two settlements in his application which he had filed under section 33-C

(2). The details regarding the basis on which he claims the benefit relying on the terms of these two settlements shall be dealt with at the later stage.

9. Some time in 1999, Respondent No.1 filed an application under section 33-C(2) of the Act, claiming benefits arising out of settlement dated 21/04/1994 and 31/12/1997 by filing an Application (IDA) No. 462 of 1999. In the said application, it was stated that he was entitled to receive from the Bank money/benefits mentioned in the settlement annexed to the said application and in the annexure to the said application it was stated that he was appointed as Grade-II Officer with effect from 26/3/1992 on probation for six months. It was alleged in the said application that the Bank, being a Co-operative Bank, was covered under the provisions of BIR Act and Model Standing Orders framed by the Government of Maharashtra under the BIR Act were applicable to the said Bank which were notified by the Government by Notification dated 16/10/1981 for the Banking Industry and it was alleged that as per the said Model Standing Orders, no employee could be appointed on probation for more than three months and, yet, opponent was appointed on probation for six months which was in violation of the law which was

applicable to the Bank. It was, therefore, alleged that after completion of period of three months, he was deemed to be confirmed on the expiry of the said three months' probation. It was further stated that there was no provision for extension of probation period. It was further alleged that during the period of probation, he was not issued any memo, show-cause notice or charge-sheet. However, he was not confirmed and the benefits under the settlement of 1994 and 1997 were not given to him. It was alleged that only basic pay and city compensatory allowance was paid to him and no benefits under the two settlements were given to him and, on the said basis, he claimed benefits under the said two settlements and, according to him, though all other employees were covered under the settlement, he alone was excluded and he was entitled to the difference of wages and other benefits as per the settlements annexed.

10. Petitioner - Bank filed its Written Statement contending that Respondent No.1 had no existing right to claim the amount arising out of the said settlements and that the said settlements were not applicable to him and further that he had resigned from Bank in 1997 and, therefore, he was not entitled to get the benefit of any of the settlements and since there was no existing right duly executable in

the court of competent jurisdiction, application filed by Respondent No.1 was not maintainable. Both the parties filed their documents and evidence was laid.

11. Respondent No.2 by judgment and order dated 3/1/2007 partly allowed the Application (IDA) No. 462 of 1999. The Petitioner, being aggrieved by the said order has filed this Petition under Article 226 of the Constitution of India.

SUBMISSIONS:

12. Mr. Shetty, the learned Counsel appearing on behalf of the Petitioner has submitted that the Labour Court has erred in passing the impugned order; firstly because Respondent No.1 did not have any existing right as envisaged under the provisions of section 33-C (2) and, therefore, it was not open for the Labour Court to adjudicate the said issue and, thereafter, grant the application which was filed by Respondent No.1. He submitted that it was not open for Respondent No.1 to now claim that the two settlements were applicable to him and he was entitled to claim benefit arising out of the said settlements. He submitted that another complaint which was filed by the registered Union had been dismissed and, in the said complaint, it

was alleged that the employees had completed 240 days and, therefore, they were entitled to be regularized. He submitted that it was, therefore, not open now for Respondent No.1 to claim that he was a deemed permanent employee. He submitted that when a specific dispute was raised by the Petitioner herein regarding status of Respondent No.1, it was not open for the Labour Court to have adjudicated the said dispute in proceedings which were conducted under section 33-C(2). He invited my attention to three settlements and pointed out that, therefore, Respondent No.1 was not entitled to get the benefit of all these settlements.

13. Mr. Nerlekar, the learned Counsel appearing on behalf of Respondent No.1 submitted that it was open for the Labour Court to interpret the award or settlement for the purpose of finding out whether the settlement or award was applicable and the benefit flowing from the said award could be given to the applicant while deciding the application under section 33-C(2). He relied upon number of judgments of the Supreme Court as also this Court. He invited my attention to the settlements of 21/04/1994 and 31/12/1997 and he submitted that the said settlements were applicable to all the employees. He submitted that at the relevant

period, Respondent No.1 was working as Grade-II Officer and was a probationer. He invited my attention to the definition of "employee" and submitted that there were only three categories of employees under the said Rule and, as such, the respondent No.1 having been appointed on probation and having completed three months, was deemed to be a permanent employee and as the two settlements clearly stated that the settlements were applicable to all the employees including Grade-II Officers of the Bank, Respondent No.1 was entitled to get the benefit of the said settlements. He submitted that the said benefit had not been given to Respondent No.1 and, therefore, he had filed an application under section 33-C(2). The learned Counsel for Respondent No.1 also invited my attention to the evidence of the employees of the Bank who had stated in their evidence that the settlements of 1994 and 1998 were partly implemented in respect of the applicant. He relied upon the judgment of the Apex Court in Central Bank of India Ltd. Vs. P.S. Rajagopalan etc reported in **AIR 1964 SC 743.** He also relied upon the judgment of the Apex Court in the case of Namor Ali Choudhary and others Vs. The Central Inland Water Transport Corporation Ltd. and another reported in **AIR 1978 SC 275**. He also relied upon the Full Bench judgment of the Gujarat High Court in Nizamuddin

Suleman Vs. New Shorrock Spg. & Wvg. Mills Co. Ltd., Nadiad and others reported in **1979 II LLJ 36.** He then relied upon the judgment of the learned Single Judge of this Court in The Inchalkaranji Urban Co-operative Bank Ltd. Vs. Shri V.H. Alase and another reported in **1997 (77) FLR 78.** He also relied upon the judgment of the learned Single Judge of this Court [S.H. Kapadia, J. (as His Lordship then was)] in Yogita Y. Sawant Vs. Amartara Rondo Packing Industries (P) Ltd and another reported in **1998(78) FLR 724.** He also relied upon the another judgment of the learned Single Judge of this Court [B.N. Srikrishna, J.(as His Lordship then was)] in State of Maharashtra Vs. P.V. Dunang, Presiding Officer, II, Labour Court and another reported in **1992(65) FLR 576.**

FINDINGS AND CONCLUSION:

14. After having considered the submissions made by the learned Counsel appearing on behalf of Petitioner and Respondent No.1, the three questions which fall for consideration before this Court are (i) whether the Labour Court in application made under section 33-C(2) is empowered to adjudicate a dispute raised by the employer regarding the status of the employee; (ii) whether the Labour Court in case of award and settlement being executed between the employer

and employee is entitled to interpret the said award or settlement for the purpose of finding out whether benefit of the award should or should not be given to the applicant in application under section 33-C(2); and (iii) whether, in the facts and circumstances of the present case, Petitioner - Bank has made out a case for interfering with the order passed by the Labour Court.

15. Some of the admitted facts in the present case are that the Petitioner - Bank had, between the year 1991 and 1992, recruited certain persons as probationers and as trainees. It is an admitted position that Respondent No.1 was recruited by the Petitioner during this period. It is also a matter of record that the Commissioner for Co-operation, Government of Maharashtra had issued certain directions to the Bank not to confirm these recruits since proper procedure had not been followed while appointing them in the said posts. Thereafter, Commissioner for Co-operation had taken a decision to terminate the services of these recruits. However, in the intervening period, the recruits went to court and obtained an order of status quo, as a result of which their services were continued from time to time. After the complaint which was filed by recruits was dismissed, a writ petition was filed in the High Court and order of status quo was continued

and, therefore, their services could not be terminated. During this period, Respondent No.1 resigned from the said service some time in the year 1997. Thereafter, negotiations which were going between the Union and the Bank culminated into agreement being signed by the parties and it was agreed that the Bank would confirm the recruits prospectively without giving them entire benefits of settlements which were arrived at in 1994 and 1997 and would give two increments to Category-A workers and one increment to Category-B workers and that they would be confirmed prospectively and no retrospective benefits would be given to these recruits. Pursuant to the settlement which was arrived between the parties, the writ petition was disposed of in terms of the consent terms. It is also an admitted position that the settlement was arrived at between the recognized Union and the Bank and was binding on all the recruits. Since Respondent No.1 had resigned in the meantime, benefit of the said settlement could not be given to him and he could not be confirmed since he had already resigned. He, thereafter, filed an application under section 33-C(2) and claimed that the benefit of earlier two settlements of 1994 and 1997 should be given to him.

16. From the facts which emerge and which are on record it is

thus clear that Respondent No.1 has based his claim on the settlements which have been arrived at between the registered Union and the Bank and he has based his claim on the said settlements. Considering the ratio of the judgments in Central Inland Water Transport Corporation Ltd (supra) and Central Bank of India Ltd (supra) and other judgments, in my view, the Labour Court was competent to decide the said application while interpreting the settlements which had been arrived at between the Union and the Bank. The submission made by Mr. Shetty, the learned Counsel appearing on behalf of the Petitioner that the Labour Court did not have jurisdiction to decide or adjudicate the status of Respondent No.1 cannot be accepted. In view of ratio laid down in the judgments on which reliance has been placed by the learned Counsel appearing on behalf of Respondent No.1, it is very clear that the Labour Court has jurisdiction to interpret the terms of the settlements in order to find out whether the benefit flowing from the said settlements should be given to Respondent No.1.

17. However, in my view, on careful perusal of the impugned order passed by the Labour Court, it is apparent that the Labour Court has overlooked certain material aspects and has wrongly come to the

conclusion that the said settlements were applicable and the benefits of the said settlements should be given to Respondent No.1 herein. It is a matter of record and it has been so stated in the settlement which was executed in 1998 that the said settlement was applicable only to those probationers/trainees whose names were given in Annexure-A and Annexure-B to the settlement. It is further admitted that the name of Respondent No.1 does not figure in Annexure-A and Annexure-B. The terms of the settlement also specifically record that though Union had urged that the benefit of the settlement should be given to the recruits retrospectively, the said demand was not accepted and it was specifically made clear that the said employees would be confirmed from prospective date and that they would be entitled only to two increments each in respect of probationers whose names were mentioned in Annexure-A and one increment in respect of trainees whose names are mentioned in Annexure-B. Consequently, by virtue of this settlement, the Union had agreed to forgo the benefits arising out of the earlier two settlements of 1994 and 1997. The submission of Mr. Nerlekar, the learned Counsel appearing on behalf of Respondent No.1 that Respondent No.1 was not party to the settlement which was executed between the Bank and the Union in 1998 and, therefore, as a consequence, he was entitled

to get the benefit of the settlements of 1994 and 1997 cannot be accepted. On conjoint reading of two settlements as also third settlement dated 09/12/1998, it is apparent that these recruits were given benefit of permanency only as a result of settlement of 1998. Prior to the said settlement, the Commissioner for Co-operation had issued directions to the Bank to terminate their services and the said directions were binding on the Bank being statutory directions issued under the provisions of the Co-operative Societies Act. It was only because of pendency of proceedings in court, the services of Respondent No.1 were continued from time to time on account of extension of order of status quo which was granted by court. Therefore, it would not be open for Respondent No.1 having resigned in 1997 and not being party to the settlement of 1998, to claim benefit of the settlements of 1994 and 1997. The Labour Court, therefore, clearly erred in coming to the conclusion that the benefit of said two settlements was available and ought to be given to Respondent No.1 herein in the absence of any settlement between Respondent No.1 and the Bank at the relevant time when the Respondent No.1 resigned. The services of Respondent No.1 were continued only because of the interim orders passed by the court. If settlement of 1998 had not been entered into, services of all these

recruits would have been terminated in view of statutory directions which were given by the Commissioner for Co-operation. The admission which is given by the Bank's employees, therefore, must be viewed from this context and, therefore, they have stated that part of the benefits of the earlier settlements were granted to Respondent No.1. These admissions cannot be read out of context and they have to be appreciated in totality of the facts and circumstances of the case.

18. In the result, Petition is allowed. The order passed by the Labour Court is set aside. Rule is made absolute in terms of prayer clause (a). Under the circumstances, there shall be no order as to costs. Petitioner may be permitted to withdraw the amount deposited in this Court after eight weeks.

(V.M. KANADE, J.)